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MEMORANDUM FOR: Chief, Position Management & Compensation Division

SUBJECT : Security Aspects - Fair Labor Standards Act Application

STATINTL

1. As previously indicated to you and [] the Fair Labor Standards Act provides that an employee can complain to the Civil Service Commission or seek relief directly from the courts for overtime work performed for which the employee feels he has not been properly compensated. For an employee of CIA to exercise such rights could be fraught with security problems.

2. Under FLSA the basic determination as to whether an employee is exempt or non-exempt and hence entitled to overtime is made through description of the duties and responsibilities performed in his job, i.e., a position description. In any complaint case to the Civil Service Commission and/or the courts, the contents of the position description would be some of the basic information required for adjudication. The rub is that the position descriptions are security classified because they contain information on Agency operations. Another facet of the complaint procedure could be required testimony before the CSC and/or the courts by position management officers, area personnel officers, supervisors, and members of the Inspector General and General Counsel staffs. This type of testimony could again involve classified information and employees who may be under cover. A third aspect is that the CSC is responsible for the enforcement of the provisions of the Act as it applies to the Federal Service. This could mean compliance surveys within the Agency by the CSC.

3. Mr. Michael D. Clogston, FLSA Compliance Program Manager for the Civil Service Commission, advises that the CSC will provide as complete confidentiality as is possible to any employee who so requests such anonymity. We asked Mr. Clogston how he would deal with complaints from the so called security agencies where classified information might be involved. He indicated that the National Security Agency had raised this question also but that he did not for the moment know the answer.

4. Along with all our other problems with FLSA, the security one becomes eminent for several reasons:

(a) the Civil Service Commission has released the FLSA poster entitled The FLSA and YOU. The poster is designed to inform employees of their rights under FLSA. Besides providing information, the poster also gives CSC regional office phone numbers. Employees can use these numbers to acquire additional information or to discuss FLSA complaint procedures. Each Federal installation is required to display the poster in conspicuous places where it will come to the attention of all appropriated and non-appropriated funds employees.

(b) as Position Management Officers go about the business of auditing jobs for FLSA purposes and making explanations to supervisors, employees and personnel officers, they are bound to generate questions on FLSA and quite possibly complaints and appeals.

(c) Agencies have an obligation to keep employees informed of their rights and entitlements under FLSA on a continuing basis. As more publicity is given on a continuing basis, the more likelihood of questions, complaints and appeals.

5. We recommend that the security implications of the implementation of the provisions of the Fair Labor Standards Act be brought immediately to the attention of the proper authorities in the Office of Security so that they may issue the necessary and appropriate advice and instructions. Our recommendations for dealing with other aspects of FLSA will be forthcoming later this week.

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Chief
PMCD/OS&T Branch

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